

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BILLY JOE BRANSCUM and DEPARTMENT OF THE AIR FORCE,  
TINKER AIR FORCE BASE, Oklahoma City, Okla.

*Docket No. 96-2097; Submitted on the Record;  
Issued September 9, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained more than a four percent permanent binaural hearing loss for which he received a schedule award.

On August 15, 1994 appellant, then a 61-year-old pneuoraulic systems mechanic, filed a notice of occupational disease, Form CA-2, alleging that he sustained bilateral hearing loss in the course of his federal employment. Appellant stated that he first became aware of his hearing loss and realized that it was caused or aggravated by his employment on June 8, 1972. On the reverse side of the form, appellant's supervisor indicated that appellant had not stopped work and was last exposed to the conditions alleged to have caused his hearing loss on August 15, 1994. Appellant retired January 3, 1995.

Accompanying the claim, the employing establishment submitted various documents including employing establishment health unit records, copies of audiograms taken during appellant's employment, an occupational noise exposure summary, an April 20, 1995 report by Dr. Robert A. Shull, Chief of audiology at the employing establishment, who found that audiometric findings obtained on January 30, 1995 revealed a bilateral mild to moderately-severe sensorineural hearing loss from 3,000 to 6,000 Hz with normal hearing sensitivity present from 500 to 2,000 Hz. Dr. Shull concluded that appellant's decrease in his hearing sensitivity is a culmination of both occupational noise and presbycusis and that appellant's hearing loss is "nonratable in each ear."

The Office of Workers' Compensation Programs referred appellant, a statement of accepted facts and medical records to Dr. Richard Dawson, a Board-certified otolaryngologist, for a second opinion. In an October 16, 1995 report, Dr. Dawson stated that he saw appellant on October 13, 1995, and that "An audiometric evaluation was performed by a licensed and

certified audiologist using ANSI standardized equipment. Dr. Dawson found a bilateral, high tone sensorineural hearing loss.<sup>1</sup>

In a March 9, 1996 report, an Office medical adviser opined, after reviewing a statement of accepted facts, the medical records, and Dr. Dawson's October 16, 1995 report, and accompanying October 13, 1995 audiogram, that appellant has a 3.8 percent monaural hearing loss in the left ear and a 5.6 percent monaural hearing loss in the right ear for a 4 percent binaural loss. The medical adviser stated that the date of maximum medical improvement was October 13, 1995.

In a March 28, 1996 award of compensation, the Office granted appellant a four percent binaural hearing loss. The award ran from October 13 to December 7, 1995 for a total of eight weeks.

The Board finds that appellant has no more than a four percent binaural hearing loss for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.<sup>2</sup> The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.<sup>3</sup> However, as a matter of administrative practice the Board has stated "For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants."<sup>4</sup>

Under the A.M.A., *Guides*, hearing loss is evaluated by determining dBs loss at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz (Hz). The losses at each frequency are added up and averaged and a "fence" of 25 dBs is deducted since, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech in everyday conditions.<sup>5</sup> The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater

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<sup>1</sup> The Board notes that Dr. Dawson stated, "According to the NIOSH formula, there is an 11 percent monaural hearing loss in the right ear and a 13 percent monaural loss in the left ear for an overall 11 percent binaural impairment."

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>4</sup> *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

<sup>5</sup> A.M.A., *Guides*, 224.

loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>6</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>7</sup>

The Office medical adviser applied the Office's standardized procedures to the October 13, 1995 audiogram performed for Dr. Dawson. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed dBs losses of 20, 25, 25, and 45, respectively. These dBs were totaled at 115 and were divided by 4 to obtain the average hearing loss at those cycles of 28.75 dBs. The average of 28.75 dBs was then reduced by 25 dBs (the first 25 dBs were discounted as discussed above) to equal 3.75 which was multiplied by the established factor of 1.5 to compute a 5.6 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dBs losses of 10, 15, 25, 60, respectively. These dBs were totaled at 110 and were divided by 4 to obtain the average hearing loss at those cycles of 27.5 dBs. The average of 27.5 dBs was then reduced by 25 dBs (as explained) to equal 2.5 which was multiplied by the established factor of 1.5 to compute a 3.8 percent loss of hearing for the left ear. The amount of the left ear (the better ear), 3.8 was multiplied by 5 and added to the amount for the right ear, 5.6 which totaled 24.6. The 24.6 was then divided by 6 to arrive at the percentage of binaural hearing loss. Accordingly, pursuant to the Office's standardized procedures, the Office medical adviser properly determined that appellant sustained a four percent binaural hearing loss.

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided by Dr. Dawson's report dated October 16, 1995 and the accompanying audiogram. This resulted in a calculation of a four percent binaural hearing loss as set forth above. Therefore, the Office properly concluded that the evidence established that appellant has no more than a four percent binaural hearing loss for which he received a schedule award.

On appeal, appellant stated that he wanted to know how the number of weeks of compensation and the amount of compensation was determined. The schedule award provisions of the Act provides for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.<sup>8</sup> The Act establishes a maximum of 52 weeks of compensation as the award for total monaural hearing loss.<sup>9</sup> A partial loss of hearing is compensated at a proportionate rate,<sup>10</sup> so the appellant's award of compensation for a 4 percent monaural hearing loss entitled him to 4 percent of 52 weeks of compensation, or 8 weeks of compensation, the amount appellant received. Appellant is entitled to no more under the Act. The monetary amount is determined by taking the weekly pay rate, in this case \$624.00 and multiplying it by 75 percent to determine the weekly compensation rate of \$468.00. The \$468.00 is multiplied by the number of weeks of compensation, eight, for a total of \$3,744.00.

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<sup>6</sup> *Id*; see also *Danniel C. Goings*, *supra* note 3 at 784.

<sup>7</sup> *Danniel C. Goings*, *supra* note 3.

<sup>8</sup> 5 U.S.C. § 8107(c) and implementing regulations at 20 C.F.R. § 10.304.

<sup>9</sup> 5 U.S.C. § 8107(c)(13)(A).

<sup>10</sup> 5 U.S.C. § 8107(c)(19).

The March 28, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
September 9, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member